IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2323 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAUHAN NANJIBHAI VIRJIBHAI HARIJAN - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR LR PATHAN for Appellant(s) : 1,
MR A.J. DESAI, A.P.P for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 25/09/2006

ORAL JUDGMENT

1. The appellant, original accused no. 1, at present in Bhavnagar Jail, is before this Court challenging the conviction and the sentence in Sessions Case No. 230/1998.

2. The learned Judge was pleased to convict the appellant for offence under Section 306 of the Indian Penal Code and awarded six years Rigorous Imprisonment, fine of Rs. 25,000/- and in default one year Simple Imprisonment.

2.1. The learned Judge also recorded conviction for an offence under Section 498(A) of the Indian Penal Code and awarded three years Rigorous Imprisonment, fine of Rs. 5,000/- and in default, nine months Simple Imprisonment. The learned Judge was pleased to order both the sentence to run concurrently and also ordered that the period for which the appellant was in jail, should be given set off.

3. The learned Judge was pleased to order that in the event the amount of fine of Rs. 30,000/- is deposited/paid, the amount of Rs. 25,000/- shall be paid to the parents of the deceased, which should be deposited as fixed deposit by the parents of the deceased in the name of the daughter of the deceased till she attains majority, in a nationalised bank. The learned Judge was pleased to provide that the parents of the deceased will be entitled to receive interest of the amount deposited as fixed deposit for the maintainance of the daughter of the deceased.

4. This appeal was filed on 14th November, 2005. It was on board on 5th September, 2006. After the matter was heard for some time, the matter was adjourned and

the office was directed to call for the Record and Proceedings so as to reach this Court on or before 15th September, 2006. The matter was adjourned to 18th September, 2006. Today, the matter is heard after the learned advocate for the appellant stated that he has gone through the Record and Proceedings and he is ready to argue the matter.

5. The case of the prosecution is that the complainant, (deceased-Vimlaben Nanjibhai-Harijan Vankar), had given a complaint on 12/10/1998 to the on duty ASI at Sir T Hospital, Bhavnagar, which was registered as FIR No. 228/98 at Vartej Police Station.

5.1. The matter was investigated for the offences under Sections 498(A), 306 and 114 of the Indian Penal Code. After the investigation was over, a charge sheet was filed against the appellant under Section 173(2) of the Criminal Procedure Code on 27/10/1998. The charge sheet and the papers were submitted in the Court of the learned Chief Judicial Magistrate (First Class) Bhavnagar, who was pleased to register it as Criminal Case No. 5514/1998. As he did not have the jurisdiction to try the case, the case was committed to Sessions under Section 209 of the Criminal Procedure Code and it was registered as Sessions Case No. 230/1998.

6. The case revealed from the complaint, filed by the deceased-Vimlaben Nanjibhai is that the complainant on account of cruelty by her husband and her in-laws committed suicide on 12/10/1998 in noon hours. It is stated in the compliant that her

husband and in-laws are residing together. There are four elder brothers of her husband who are residing separate. There are four sisters '(Nanand)' of her husband who are married and are at their in-laws place. The marriage of the complainant had taken place about five years before. She is blessed with a female child of the wedlock. She is about four years old. Her parental home is at village 'Devgana', Taluka: Sihore. Her husband is serving in a Police Department. Around 1:30 p.m., she sprinkled kerosene of her own and ignited herself. She sustained burn injuries. It was specifically mentioned in the complaint that she was subjected to cruelty by her husband and the in-laws and that she was beaten by her husband. She was at her parental house and about ten days before the incident she was brought back by her husband. On the earlier night she had a quarrel with her husband. Due to the cruelty by all the three i.e. her husband and the in-laws she committed this act. The neighbours brought her to the government hospital and admitted in the 'burns ward'. She having sustained burn injuries on both the thumbs, impression of her left foot thumb was taken.

7. The prosecution examined the following witnesses;

P.W. No. 1	Tejabhai Devjibhai Solanki	Exh. 24
P.W. No. 3	Dineshbhai Mohanbhai Solanki	Exh. 37
P.W. No. 4	Pravinbhai Kanabhai Solanki	Exh. 42
P.W. No. 2	Bijalbhai Danabhai,	

	a panch witness	Exh. 35
P.W. No. 5	Ranabhai Meghjibhai Sumera, Executive Magistrate	Exh. 43
P.W. No. 6	Dr. Bhanuben Harilal Shah	Exh. 53
P.W. No. 9	Dr. Vijaybhai Chatrabhuj Ramdevputram	Exh. 79
P.W. No. 7	Lakshambhai Tapubhai Rathod, One who recorded the complaint	Exh. 56
P.W. No. 8	Naranbhai Dehabhai Patel Investigating Officer	Exh. 72

8. Besides the aforestated oral evidence, the prosecution also led the following documentary evidence.

1.	Inquest yadi	Exh. 48
2.	Death certificate	Exh. 63
3.	Order for investigation	Exh. 57
4.	Complaint	Exh. 58
5.	Extract of Station Dairy	Exh. 60
6.	Yadi for Investigation	Exh. 61 & 62
7.	Receipt for handing over death certificate	Exh. 64
8.	Report to add Section 306	Exh. 65
9.	Copy of the Station dairy	Exh. 67 & 73
10.	Report of graver offence	Exh. 75
11.	Letter intimating about the incident / offence to the Higher Officer	Exh. 76
12.	Details of the service of Ghoga, Police Station	Exh. 77

9. The prosecution also relied upon the following documentary evidence in addition to the documentary evidence referred in para 8.

1.	Panchnama of scene of offence	Exh. 25
2.	Medical evidence-Inquest panchnama	Exh. 36
3.	Postmortem Note	Exh. 54
4.	Case Papers	Exh. 81
5.	Case papers of the deceased	Exh. 80
6.	Chart showing the temperature	Exh. 82
7.	Yadi for recording dying declaration	Exh. 45
8.	Dying declaration	Exh. 47
9.	Copy of the complaint	Exh. 38
10.	Application made by the deceased for issuing warrant to accused no. 1	Exh. 39
11.	Letter sanctioning department inquiry against accused no. 1	Exh. 40
12.	Order granting permission to record statement	Exh. 41
13.	Copy of the maintainance application filed by the deceased in Sihore Court	Exh. 70
14.	Closing purshis	Exh. 84
15.	Written statement of A.P.P. and the learned advocate of the accused	Exh. 86

10. The learned advocate for the appellant invited attention of the Court to paragraph 13.1 wherein the learned Judge has appreciated the oral evidence of the relatives of the deceased. The learned Judge has recorded that P.W. No. 1, Tejabhai Devjibhai Solanki,

Exh. 24, is the uncle of the deceased. He has deposed that the deceased was subjected to cruelty by the accused. He has also deposed that the deceased used to come to her parental home after the quarrel at her husband's place. She was sent back after persuasion.

10.1.The learned Judge has noted that the important aspect of the matter is that, after about six months stay at her husband's place the deceased had gone to her parental home and only about ten days before the incident she was brought back by her husband.

11. The learned advocate for the appellant submitted that this should be construed to mean that, 'the deceased was never subjected to cruelty by either her husband or the in-laws' because for all the time she was staying at her parental home. He submitted that even otherwise when one refers to **“cruelty”** under **Section 498-A**, as is the explanation given in the statute itself, it must be in the form of, (a) **“any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;”**

12. He submitted that there is no evidence on record to show that there was any cruelty, much less of such nature, which would have driven the women to commit suicide.

12.1.The learned advocate is making this submission on the basis that, 'one can be subjected to cruelty only when one is residing together'. As in the present case the deceased was not residing with her

husband, for almost four years there is no question of she being subjected to cruelty. The learned advocate very vehemently submitted that this is an out right case of holding that there was no cruelty and once there was no cruelty, the appellant must be given a clean chit and the charge of Section 498(A) and 306 be held to have been wrongly levelled.

12.2.It is too easy to say that, 'there was no cruelty to a married women who after marriage with a female child of about four years, is residing at her parent's house. If not in these facts one is said to have been subjected to cruelty, possibly in no other sets of facts, cruelty can be alleged.

13. The learned advocate appearing for the appellant invited attention of this Court to paragraph 13.2 & 13.3 and submitted that there is no evidence which can prove that there was nexus between the so called cruelty and the act of suicide.

14. The learned advocate for the appellant-accused invited attention of the Court to the so called discrepancies between three different versions about cruelty. He submitted that first in point of time is the hospital record in the form of the 'case paper' prepared soon after the deceased was admitted in the hospital, at Exh. 81. The learned advocate submitted that at Page No. 1 it is recorded that **“H/O burns (self suicidal case), kerosene smell”** He submitted that it is only on the second page it is at 2:30 p.m. the Doctor has recorded that **“H/O separation for four years on account of beating by the husband, due to torture of the husband, the**

patient poured kerosene and ignited herself”

15. He submitted that this shows that in-laws were not implicated while giving the information first in point of time. This information, was given by the deceased, and was recorded by the Doctor.

15.1.The learned advocate next drew attention to the deposition of P.W. No. 7, Lakshmanbhai Tapubhai Rathod, the ASI on duty at hospital. He recorded the complaint Exh. 58. In paragraph 2, this witness P.W. No. 7 has stated that, 'on asking, Vimlaben Nanjibhai(deceased), informed that, my marriage had taken place before five years with Nanjibhai Virjibhai. My parental home is at village Devgana. I have one daughter. My in-laws are alive. At noon when I was at home around 1:30 p.m. I poured kerosene of my own and sustained burn injuries. I had torture from my in-laws. The torture was from my in-laws and my husband.'

15.2.The complaint was taken down, and, thereafter, her left foot thumb impression was taken and the same was signed by the deponent.

16. The learned advocate for the appellant submitted that this is for the first time i.e. after the deceased was admitted in the hospital she stated about the torture from her in-laws. Initially she stated only about her husband. Later on she improved her version and implicated her in-laws also.

17. The learned advocate for the appellant next invited attention of the Court to Exh. 43, deposition of Shri Ranabhai Meghjibhai Sumera, P.W. No. 5, Executive Magistrate, serving in the office of City

Mamlatdar, Bhavnagar. This witness has stated in paragraph 3 that “I had gone to Sir T hospital, Bhavnagar. I had met the medical Officer on duty. The name of the Medical Officer was Shri Ramdevputram. He informed me that dying declaration of Vimlaben Nanjibhai is to be recored. He took me to the 'burns ward', there he identified Vimlaben. He asked the name of the deceased and on her replying in full consciousness he certified that she is conscious and is able to reply to the question. The Medical Officer signed the certificate recorded in the dying declaration. The deponent was shown Mark 15/5 on seeing that deponent stated that it bears the signature of the Medical Officer who has given the certificate.

17.1. The deponent has stated that, he then informed Vimlaben that her dying declaration was to be recorded. The name and age of Vimlaben was asked, then she was asked as to what happened and why are you in hospital. Vimlaben informed that I, of my own, from a container of kerosene poured and sustained burn injuries. I had torture of my husband. My husband was beating me and was telling that he does not want me. I was at my parental home for four years. Ten days past I was brought back. I was not given anything to eat. My husband is serving at present at Gogha in Police department. Due to the torture of my husband, I have burnt myself by pouring kerosene. Five years have passed to my marriage. As I have sustained burn injuries on the whole body, I am not able to make a thumb impression and,

therefore, impression of left foot thumb is made".

17.1.The deponent has stated in paragraph 5 that after the statement was recorded the same was read over to Vimlaben and thereafter her right foot thumb impression was taken. The deponent was shown mark 44/3. The deponent stated that it is the dying declaration of Vimlaben, which was recorded by him in original. He also identified his signature in the said dying declaration and the left foot thumb impression of Vimlaben.

18. The learned advocate for the appellant submitted that every time there is an improvement in the story of the deceased. He submitted that taking into consideration the so called improvement, the Court ought to have held that witness is not reliable at all and, therefore, giving benefit of doubt, no conviction ought to have been recorded against the husband of the deceased.

19. Learned advocate for the appellant reiterated his submission that the marriage had taken place five years before the death of the deceased. The deceased had stayed with her husband only for about six months after the marriage and thereafter for about 10 days before the incident and, therefore, it cannot be said that the deceased was subjected to cruelty at any point of time and, therefore, no case is made out against the accused much less against the in-laws, who according to the learned advocate for the appellant were not residing with the husband of the deceased. He submitted that there has to be nexus in the so called cruelty which should be of such

nature that would drive the woman to commit suicide. He submitted that in the first document i.e. the case papers, wherein history is recorded by the Doctor, there is no mention about the in-laws. There is no mention about the nature of the cruelty. Thereafter, the complaint was recorded by P.W. No. 7. In that there is improvement and the deceased said that there was torture of her husband and the in-laws but then nature of cruelty is not mentioned. Finally it is the dying declaration in which for the first time the nature of the cruelty is mentioned. He submitted that taking into consideration the gradual improvement made by the deceased, the evidence should have been held to be unreliable and untrustworthy, that being so the accused and the in-laws should have been given acquittal or in any case benefit of doubt.

20. The learned advocate for the appellant relied upon a judgement of the Hon'ble Apex Court in the matter of **MUNEER KHAN AND ORS Vs STATE OF M.P.** reported in **(2002) 9 SCC 523.** He submitted that in the case before the Hon'ble the Apex Court it was a case of bride burning where the death had taken place in nuptial home and the Hon'ble Apex Court was pleased to observe that;

> **"**8. The conclusion reached by the trial Court cannot be held to be perverse or so unreasonable as no court would reach such conclusion. Hence it was not proper on the part of the High Court to reverse the order of acquittal merely basing on the said dying declaration of the deceased, in the peculiar facts and circumstances of this

case. It does not inspire confidence as the true fact. On the other hand the dying declaration has all the trappings of a desire to catch everyone of the in-laws against whom she would have been nurturing some grouse.”

21. The decision of the Hon'ble Apex Court is in different set of facts. There the learned Judge who had privilege to have seen the witnesses, on appreciation of the evidence, had recorded acquittal.

21.1.This acquittal was reversed by the High Court relying upon the 'dying declaration'.

21.2.The Hon'ble Apex Court said that it is not a case wherein the High Court should have reversed the acquittal relying upon the dying declaration which the Hon'ble Apex Court found to have all the traps of a desire to catch everyone of the in-laws against whom she would have been nurturing some grouse. In the present case though it is stated by the learned advocate for the appellant that her in-laws were not residing with her husband, in the dying declaration the deceased had stated that the in-laws were residing with the husband. It is on record that the husband of the deceased had four brothers and four sisters. If the deceased could have roped in the in-laws, who according to the learned advocate for the appellant were not residing with the husband of the deceased, she could have as well roped in other members of the family. The decision of the Hon'ble the Apex Court is not applicable to the case of the appellant.

22. The learned advocate for the appellant-accused

next relied upon a decision of the division bench of this Court in the matter of **STATE OF GUJARAT Vs MAMUBHA PREMSANGJI JADEJA & ORS, 1999(3) GLR 2613.**

22.1.In the case before the Division Bench of this Court there were three dying declarations and all the three dying declarations had conflicting versions as regards number of accused and weapons used. The division bench on facts held **"no reliance could be placed on such declarations."**

23. In the present case there is no such flaw in three versions of the deceased which are termed as 'dying declaration'. All the three versions are appreciated by the learned Judge and has then recorded conviction against the appellant, in a right way. It does not warrant any interference. The history recorded by the doctor is only by way of information, while, he is engrossed in the treatment of the patient. The doctor is mainly concerned with the well being of the patient. His attention is focused on the seriousness of the injuries sustained by the patient. He is not expected to go into the minute details of the so called history of the incident. If the contradiction was of such nature which breaks the thread of the prosecution case like at first instance it is stated that, 'it was the husband who poured kerosene on the deceased' and in the later part it is said that, 'it was I who poured kerosene' or vice versa, then dying declaration may be required to be discarded. The dying declaration recorded by the Executive Magistrate could not be dis lodged by the learned

advocate for the appellant. The learned advocate for the appellant could not point out any reason for which the said dying declaration cannot be believed. The person recording the dying declaration has no interest in the matter, he is not interested to see that the accused goes behind the bar or is convicted for an offence which is not committed by him. The learned advocate has not pressed any other point.

24. In view of the aforesaid discussion, having considered the submissions of the learned advocate , the record and proceedings of the case, this Court finds that the judgement and the order passed by the learned Sessions Judge, Bhavnagar does not warrant any interference. In the result this appeal fails and the same is dismissed.

(RAVI R. TRIPATHI, J.)

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